IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3656 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

S T KARMCHARI MANDAL & ANOTHER

Appearance:

1. Special Civil Application No. 3656 of 1994

MR HARDIK C RAWAL for the Petitioner

Respondent No. 1 SERVED

MR MUKESH H RATHOD for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/10/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") challenges the judgment and award dated 13th October, 1993 passed by the Industrial Tribunal, Rajkot (hereinafter referred to as "the Tribunal") in Reference (ITR) No.160/1985. By impugned award the punishment of reduction in pay to the lowest stage in the pay-scale imposed by the Appellate Board upon delinquent workman has been substituted by punishment of withholding of two increments with future effect.

Learned advocate Mr.Rawal has submitted that the respondent No.2 workman was employed by the Corporation as a Bus Conductor. Within two years of service he was repeatedly found to have committed misconduct amounting to financial irregularities and misappropriation of Corporation's funds. For such acts of commission and omission the workman was punished on three occasions. In the incidence in question i.e. on 14th August, 1980 the workman was on duty on Gandhidham-Naliya route. At the time of checking he was found to have reissued the used tickets to the passengers and had preserved some three used tickets with an intention to reissue it. For the said act of misconduct amounting to financial irregularities and misappropriation of the Corporation's funds, after holding due enquiry, by order dated 28th August, 1981, the workman was visited with punishment of dismissal from service. The said order of dismissal from service was confirmed in departmental appeal but was set aside by the Appellate Board in second appeal. The Appellate Board directed reinstatement of the workman in service and substituted the punishment of dismissal from service by punishment of reduction in pay to the lowest stage in the pay-scale.

Feeling aggrieved by the said punishment imposed by the Appellate Board the workman raised industrial dispute which was referred to the Industrial Tribunal, Rajkot and was registered as above. The Tribunal has, without recording the reasons for the same, exercised power vested under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and has substituted the punishment of reduction in pay by that of withholding of two increments with future effect. Mr.Rawal has relied upon the judgment of the Hon'ble Supreme Court in the matter of Regional Manager, U.P.SRTC, Etawah and others v/s. Hotilal and another [(2003) 3 SCC 605]. He has submitted that unless the Tribunal finds that the punishment imposed by the employer upon the delinquent workman is disproportionately harsh, the power under Section 11-A of

the Act cannot be invoked. In the present case, the Tribunal has failed to record reasons for substituting the punishment imposed by the Appellate Board. In the submission of Mr.Rawal the Tribunal has transgressed the jurisdiction conferred by Section 11-A of the Act. The impugned award, therefore, calls for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Learned advocate Mr.Rathod has contested the petition and has supported the impugned award made by the Tribunal.

As recorded hereinabove, the charge against the workman was that of committing financial irregularities and of misappropriation of the Corporation's funds. The said charge was proved after holding due enquiry. In my view, the misconduct involving financial irregularities and misappropriation of Corporation money should be considered grave enough to warrant termination of service. In the present case, the workman was, within less than two years of service, found to have committed similar acts of misconduct on four occasions. The workman, therefore, did not deserve any sympathy. However, in the departmental appeal before the Appellate Board, the Appellate Board, for the reasons unknown, ordered reinstatement of the workman in service and imposed punishment of reduction in pay to the lowest stage of the pay-scale. As the workman had served only for two years or even less than that, the said punishment would result into a loss of some two increments.

In the reference before the Tribunal, the workman had claimed that the punishment was imposed upon the workman without affording the workman opportunity to defend himself. The Tribunal has recorded the pleadings. However, it has not recorded the finding whether the due disciplinary proceeding was held against the workman; whether due opportunity of defence was given to the workman. The Tribunal has not referred to the past record of the workman which was specifically brought to the notice of the Tribunal by the Corporation. The Tribunal has observed that in such cases, ordinarily a punishment of withholding of two increments with future effect is imposed and that the workman deserved a similar punishment. The Tribunal has, therefore, made the order accordingly. As the Tribunal has invoked jurisdiction conferred by Section 11-A of the Act, it presupposes that the Tribunal did find that due disciplinary proceeding was held against the workman and that the workman had

adequate opportunity of defence. However, the Tribunal has failed to record its satisfaction that the punishment imposed upon the workman was disproportionately harsh and that the Tribunal, for the reasons recorded, was required to invoke jurisdiction conferred by Section 11-A of the Act.

It is well-settled that if due disciplinary proceeding is held; the guilt of the workman is proved, the Tribunal is not required to interfere with the punishment imposed in a disciplinary proceeding except in case where the punishment imposed is shockingly disproportionate. It is, therefore, imperative that the Tribunal should record its satisfaction that the punishment imposed upon the workman is shockingly disproportionate and calls for interference.

In the present case, I am of the opinion that the workman deserved a punishment not lesser than that of termination of service. Nevertheless, the Appellate Board was indulgent enough to reinstate the workman in service. The punishment of reduction in pay imposed by the Appellate Board, therefore, cannot be said to be disproportionately harsh. In my view, the Tribunal has traversed beyond its jurisdiction in invoking the discretionary jurisdiction conferred by Section 11-A of the Act. Instead of recording its satisfaction on adequacy of punishment, the Tribunal has wrongly invoked the principle of equality. As such the principle of equality cannot be invoked in disciplinary matters. It is but abuse of discretionary jurisdiction conferred upon the Tribunal. Such order needs to be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

In above view of the matter, the petition is allowed. The impugned judgment and award dated 13th October, 1993 passed by the Industrial Tribunal, Rajkot in Reference (ITR) No.160/1985 is quashed and set aside. The claim made by the workman stands rejected. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)
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